

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States Fidelity and)	August 4, 2020
Guaranty Company,)	
)	
Plaintiff,)	Greenville, SC
)	
)	
vs.)	
)	
Southern Insulation Inc,)	6:19cv02980
)	
Defendant.)	
_____)	

TRANSCRIPT OF MOTION TO COMPEL

BEFORE THE HONORABLE HENRY M. HERLONG JR.
United States District Judge, presiding

A P P E A R A N C E S:

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P R O C E E D I N G S

(Court is called to order on Tuesday, August 04, 2020 at 10:40 a.m.)

THE COURT: Thank you. Be seated please.

THE CLERK: And please mute your mic when you're not speaking because we're getting feedback.

THE COURT: For the attorneys who are present in the courtroom, if you wish to do so, when you talk, you can remove your mask because you are separated.

In this matter, the defendants, I believe, have motions to compel. And I'll hear from the defendant at this time.

MR. WHITE: Your Honor, may it please the Court. John White of Harrison White on behalf of the defendants. On the screen, Your Honor, to the far left, the gentleman with the blue suit and blue tie, is named Brady Edwards. He's with Morgan Lewis. He's from Texas. He's our cocounsel, and he will be arguing this motion to compel this morning.

To my immediate left is Peter Protopapas. He's the receiver for Southern Insulation. And more importantly, to my rear is Marghretta Shisko, who is my partner, and as the Court knows, she enables me to do what I do. So we're here on behalf of the Southern Insulation. We're glad to see that you are well and your staff, and appreciate the opportunity this morning to argue this, which we consider a very important motion.

1 **THE COURT:** Well, before I hear argument, I will let
2 the plaintiff identify themselves.

3 **MR. DAVIS:** Good morning, Your Honor. William Davis
4 with Baker Ravenel and Bender, here for USF&G. And Harry Lee of
5 the Steptoe firm in Washington DC is appearing by video and
6 will be responding.

7 **MR. LEE:** Good morning.

8 **THE COURT:** Good morning.

9 **THE CLERK:** Be sure to speak into the mic when you
10 speak. Thank you.

11 **THE COURT:** Mr. Edwards, I'll hear from you.

12 **MR. EDWARDS:** Thank you, Your Honor. And thank you
13 for having us and accommodating us by video this morning. The
14 parties come to you very early in this case, but with a great
15 deal of history between us from other similar matters. And as a
16 result of that, Mr. White thought it might be helpful if I gave
17 some background as to what brought us here and the -- the
18 nature of the dispute before us today.

19 In recent years, the South Carolina asbestos
20 litigation has become extremely active. And as a result of
21 that, the South Carolina Supreme Court has appointed retired
22 Chief Justice Jean Toal to oversee all of the asbestos
23 litigation in South Carolina. As part of her duties, Chief
24 Justice Toal has on occasion appointed Mr. Protopapas as the
25 receiver for defunct companies that have been sued in the South

1 Carolina asbestos litigation.

2 In that capacity, Mr. Protopapas is responsible for,
3 really, two jobs for these defunct companies: the first is to
4 marshal the assets of these companies, which are generally
5 insurance policies and rights under insurance policies; and a
6 second part of his job is to administer the defense of the
7 asbestos cases that are filed against these defunct entities.

8 To date, Chief Justice Toal has appointed
9 Mr. Protopapas in three such receiverships. In the first
10 receivership, the parties -- the company there was called
11 Covil, C-o-v-i-l. Mr. Protopapas, on behalf of the company and
12 USF&G, have had lengthy and hotly-contested insurance coverage
13 litigation whereas Mr. Protopapas has been seeking to
14 understand, investigate, and identify the scope of the
15 insurance available for Covil in that case.

16 After two years of litigation with USF&G, where I
17 believe Mr. Davis there in the courtroom served as USF&G's
18 counsel, Chief Justice Toal concluded that USF&G had not been
19 forthright and candid with the Court in that process, and made
20 findings based upon the evidence that had been discovered in
21 that case and USF&G's behavior, that two years of coverage
22 which had been identified when we started was actually 12 years
23 of coverage. And Chief -- Chief Justice Toal made a number of
24 findings about why that coverage had been so difficult to
25 discover, including findings related to USF&G's corporate

1 policy of, quote, purging, closed quote, its documents to put
2 policyholders, like Southern Insulation here, in this laundry
3 of needing coverage that it purchased years ago for asbestos
4 cases filed today, but not being able to locate it because it
5 had been destroyed. That's the situation that we find ourselves
6 in today.

7 Southern Insulation was formed in 1967 and later
8 dissolved in 1991. Mr. Protopapas was appointed as receiver
9 almost 30 years later and, upon his appointment, set out to
10 marshal the assets, identify the insurance policies, and
11 administer the defense of the asbestos litigation in South
12 Carolina. As part of his investigation into the policies
13 available to Southern, Mr. Protopapas discovered two
14 certificates of insurance issued by USF&G, which is now part
15 of Travelers. These certificates of insurance reflect a policy
16 of coverage from 1967 to 1968. And in according USF&G's own
17 documents, in the absence of an insurance policy itself
18 certificate of insurance of this sort is to be treated as the
19 policy.

20 **THE COURT:** Say that again --

21 **MR. EDWARDS:** As such -- pardon me?

22 **THE COURT:** Say that again.

23 **MR. EDWARDS:** Yes, sir. Mr. Protopapas identified
24 two certificates of insurance --

25 **THE COURT:** I got that. What I wanted you to repeat

1 was, I thought you said that pursuant to USF&G's policy, they
2 treat certificates of insurance -- what?

3 **MR. EDWARDS:** Yes, sir. According to USF&G's own
4 documents, a certificate of insurance is, quote, a statement of
5 coverage taking place -- the place of the policy as evidence of
6 insurance.

7 **THE COURT:** What do you mean when you say "pursuant
8 to that policy"? You're saying they've got some written
9 policy?

10 **MR. EDWARDS:** No, Your Honor. In documents that we
11 obtained from USF&G in the Covil case that I mentioned, we have
12 a handbook from the Education Department of USF&G, which
13 describes insurance as, quote, a statement of coverage taking
14 the place of the policy as evidence of insurance ---

15 **THE COURT:** Okay.

16 **MR. EDWARDS:** --- close quote. So with those
17 certificates of insurance at hand and our knowledge of how
18 USF&G internally has said it would treat those policies --
19 those certificates as policies, Mr. Protopapas began to tender
20 current asbestos lawsuits to Travelers for their handling to
21 provide both the defense and an indemnity in those cases.

22 In response to those requests, Travelers denied the
23 coverage, refused to accept the tender in those cases and, to
24 our surprise, filed this case in -- in Your Honor's court
25 asking for a complete indemnification of itself as having no

1 rights or responsibilities as to Southern from the beginning of
2 time through today.

3 Now, as context, there is a normal coverage --
4 insurance coverage litigation going on between Southern and all
5 of its insurers in state court in North Carolina, where these
6 rights and responsibilities will be determined in due course.
7 But for some reason, having received a number of tendered
8 lawsuits, USF&G filed the instant case in federal court asking
9 essentially for a get-out-of-jail-free card, that there is no
10 obligation on behalf Travelers to USF&G to Southern, despite
11 the existence of these certificates of insurance issued on
12 their letterhead and described in their policy.

13 Faced with that request for extraordinarily broad
14 relief, which is contrary to the documents we have been able to
15 locate, we asked Travelers to produce information regarding the
16 complete relationship between Southern Insulation and USF&G.
17 And as we experienced in the Covil case and as Justice Toal
18 described in her writings, we thwarted and have been thwarted
19 at every turn in this case, where although the relief sought by
20 way of USF&G's lawsuit is for a complete exoneration, that
21 there is no right or responsibility owed to Southern by
22 Travelers for all time, the company has limited its response to
23 the year of coverage that we have been able to locate and has
24 lodged a wide array of boilerplate objections to what we view
25 as relatively standard discovery seeking to keep together what

1 relationship Southern had with Travelers from the beginning,
2 1967, through the dissolution of the company in 1991. As a
3 receiver, we do not have access to existing vibrant corporate
4 records. The company has not been in existence for almost 30
5 years. And so we are left to rely on, in this case, discovery
6 to ascertain what documents Travelers had and what the
7 relationship between the companies was.

8 In addition to the problems with the types of
9 discovery responses they've provided to us, as was the case in
10 Covil in front of Chief Justice Toal, these responses are made
11 as if there was no corporate destruction policy and we know
12 that that happened. Justice Toal made her findings. We have
13 those documents. We know that when Travelers says "We've looked
14 and we can't find the documents," that a reason for that is
15 that they went and intentionally destroyed insurance and
16 policies, just like this one, in the 1980s. And for them to now
17 come forward as they did in front of Chief Justice Toal and
18 say, "We've look really hard, but we can't find them," we
19 believe is not the level of candor to the Court that is
20 required and is similar to what was done with -- with Chief
21 Justice Toal's case.

22 So if Travelers seeks broad relief that they owe us
23 nothing, that there is no relationship, and that there are no
24 policies, we believe that explanation must be couched in terms
25 of its own conduct, where members of Travelers management made

1 the decision to destroy policies of the type that we're talking
2 about here and then filed this case and says, "We don't owe any
3 obligation to Southern because we checked and we don't have any
4 policies, so please let us go." And inherent in that is the
5 request that the search that Travelers has made is an honest
6 search. And based upon our experience with Travelers in a
7 similar case with Covil where Jean Toal found anything like an
8 honest search, we are concerned with the level of
9 responsiveness here and, as a result, filed this motion.

10 **THE COURT:** Well, so you are telling the Court that,
11 I guess you couched it in the terms of a suspicion, that policy
12 relationships have been destroyed and they don't have anything,
13 correct? But you don't know that for sure.

14 **MR. EDWARDS:** Your Honor, what we do know for sure is
15 that policies in the 1980s that existed at USF&G were made
16 subject of a corporate-wide document purge. Because the
17 management and the lawyers at USF&G became concerned about the
18 mounting asbestos liabilities that the company faced and, as a
19 result, they made the decision to destroy those policies, to
20 put policyholders at a disadvantage when coming to seek benefit
21 of that coverage. We know that and that's in Jean -- in Chief
22 Justice Toal's orders, which I believe we have attached to our
23 papers.

24 **THE COURT:** Well, I know, but what do you want --
25 what do you want this Court to do?

1 **MR. EDWARDS:** Your Honor, what this Court is faced
2 with is the request from Travelers to say based upon their
3 search for those policies and their inability to find those
4 policies that this Court should declare that Travelers owes no
5 obligation to Southern.

6 **THE COURT:** Well, now, wait a minute. We're not --
7 we're not at a summary judgment stage. We're at a motion to
8 compel stage. Your motions before me today, I believe, is a
9 motion to compel.

10 **MR. EDWARDS:** That's correct, Your Honor.

11 **THE COURT:** So as it relates so the motion to compel,
12 what are you requesting of the Court?

13 **MR. EDWARDS:** Your Honor, thank you for the question.
14 What we're requesting is that Travelers be required to answer
15 fully the questions that we have posed to it with respect to
16 the policies that it issued during that time period to
17 Southern. And if the answer is that they cannot find those
18 policies, we believe that it is incumbent upon them to explain
19 why that is. Because it is -- it is clear that policies were
20 issued because we have certificates of insurance reflecting
21 those -- that policy on USF&G's letterhead. And for them to
22 say, "We've looked and we can't find the policy," without
23 further context as to why that policy no longer exists, we
24 think is misleading and unfair in light of the broad relief
25 that they seek.

1 **THE COURT:** Well, haven't they said that by their
2 normal retention policies that they don't have evidence of the
3 policy?

4 **MR. EDWARDS:** Your Honor, they have made reference to
5 a document retention policy and said that the policies may have
6 been destroyed in '71. That was not our experience in the Covil
7 case where we also found secondary -- what's called secondary
8 evidence of the policies of information related to the purchase
9 and sale of the policies even beforehand. But even if you
10 accept the assertion that these policies, which were operative
11 in 1967 -- this policy which was operative in 1967 and '68, it
12 should not have been destroyed in 1971. A policyholder has a
13 right to access its policies while --

14 **THE COURT:** I know -- I know -- excuse me for
15 interrupting you. But you are saying it shouldn't have been,
16 but let's assume that it was. I'm going to go back to my
17 question. Of course, I'm going to hear from the plaintiff in a
18 moment. But you are here on a motion to compel. If I give you
19 whatever relief you're asking for, what would that relief be?

20 **MR. EDWARDS:** Your Honor, we're asking for a complete
21 answer as to what happened to these documents.

22 **THE COURT:** Okay. Let me hear from the movant -- I
23 mean, excuse me, from the plaintiff.

24 **MR. LEE:** Thank you, Your Honor. This is Gary Lee. I
25 appreciate your time this morning. I do think the Court has hit

1 the nail on the head. I don't think that this motion to compel
2 was filed with the purpose of compelling anything. I think it
3 was filed to try to tell the Court a story and to retain the
4 Court for purpose of summary judgment at trial. We're going to
5 move past that and get back to the motion to compel.

6 USF&G responded to all of Southern's discoveries. In
7 those responses were lodged various objections and we believe
8 all of those objections are valid. But --

9 **THE COURT:** What were your objection -- wait a
10 minute. What are your -- what are your objections to what they
11 asked for?

12 **MR. LEE:** There are various -- and I will go through
13 them, Your Honor. Before I go through them, I wanted to get to
14 the point that Your Honor was raising. Despite our objections,
15 we have produced through a reasonable search, which we have
16 described to the defendant, every document that they have asked
17 for, if we have it, and every information that they've asked
18 for, if we have it. The bottom line is we have next to nothing
19 and we think there are good reasons and I can explain those,
20 Your Honor. And in fairness, I feel like I have to in light of
21 the accusations that are made but I do want to get to the
22 answer to the Court's question.

23 With respect to the -- I'll say the two primary
24 objections. Southern asked for us to search for documents that
25 went back to 1950, which is 17 years before Southern became a

1 corporation, before it even came into existence. It also asked
2 us to produce documents going up to 2019, 28 years after
3 Southern dissolved. We believe that a 50-, 60-, 70-year
4 timeframe to search for documents, when the only evidence that
5 exist are two unauthenticated certificates of insurance that
6 conflict with each other and that were not issued by USF&G or
7 sent to USF&G --

8 **THE COURT:** Let me -- let me -- let me stop you right
9 there and ask you about that because I'm intrigued about that.
10 The two certificates of insurance that are in the record, I
11 believe you just mentioned you questioned their authenticity?

12 **MR. LEE:** Yes, Your Honor. They have not been
13 authenticated as to where they came from by Southern. They just
14 were handed to us. They weren't signed by --

15 **THE COURT:** I know. On the face of it, is there
16 anything that you have that indicates that they are not valid?

17 **MR. LEE:** Yes, Your Honor. If you will look at the --

18 **THE COURT:** What is that?

19 **MR. LEE:** They've got different dates on them for
20 different policy periods. That would not be normal. Something's
21 not right with those certificates. In addition, Your Honor,
22 that's the first year that Southern came into existence and --
23 at least that's what they say -- and they did not appear to buy
24 workers compensation insurance in that first year, which they
25 had to by law. We are wondering whether certificates which can

1 be just sent by an agent without telling USF&G and without
2 sending them to USF&G, just sent out by the agent or whoever
3 they want to, but a broker, whether there really was insurance
4 purchased from us in that year or, instead, it was purchased
5 the next year from another company called Continental, which
6 Southern has not admitted was its insurer that next year. And
7 so we do believe that the certificates are suspect. I'm not
8 suggesting that there's anything criminal is going on, but
9 there's something that's not right. And they are the only
10 documents, the only documents that Southern has come up with
11 that any other insurer that -- or was one of Southern's
12 carriers came up with that USF&G has found after searching all
13 of its systems for all 50, 60, 70 years to find any indicia of
14 any kind that Southern ever made a claim, that they ever
15 noticed a letter, that they ever submitted an application, that
16 we ever issued a policy. There's nothing.

17 **THE COURT:** So these were supposedly issued by the
18 Glover Brothers; is that right?

19 **MR. LEE:** Yes, that's a broker, Your Honor.

20 **THE COURT:** That's a broker?

21 **MR. LEE:** Yes.

22 **THE COURT:** Were they an agent of USF&G?

23 **MR. LEE:** No. They were Southern's agent. They're
24 Southern's broker. They were the ones who would purchased
25 insurance from USF&G. And so as a result, they belong to

1 Southern; they don't belong to USF&G.

2 **THE COURT:** It's on a -- I'm just curious. It's on a
3 title of USF&G here.

4 **MR. LEE:** Right. And so what happens is agents who --
5 who can purchase broker insurance for the various policyholders
6 for various companies, they get these certificates in blank.
7 And then, they fill them out -- they don't send them to us --
8 when they are asked to by somebody. And so it's possible. I
9 mean, Your Honor, we have not said it's impossible. It's
10 possible that a policy was purchased. With respect to this
11 motion, that policy was purchased more than 50 years ago. And
12 Southern never tendered us a claim until 2019. There is no
13 doubt and no reason why that policy wouldn't have been
14 destroyed a long time ago. But from our perspective, we have
15 doubts as to whether the policy was ever issued at all.

16 So to try to answer the Court's question about that
17 and to get through the objections we've raised, our first
18 objection was a time -- a scope of the time. That meant search
19 for 50 or 60 or 70 years, but Your Honor, we did it anyway. We
20 looked for anything we had that related to Southern, whether it
21 was reinsurance, whether it was an application, whether it was
22 a letter, whether it was a claim, whether it was policy,
23 whether it was any indication of any kind that we had issued a
24 policy. And there isn't anything.

25 So it's not simply a matter of supposedly destroying

1 policy. If a policy was issued, there's usually other things at
2 the insurance company that would suggest that a policy was
3 issued.

4 **THE COURT:** Well, let me -- let me -- let me ask you
5 this -- excuse me, you said that you completely searched and
6 you informed the defendant that you searched fully and that you
7 don't have anything. Did you lodge other -- did you lodge --
8 then, did you lodge other objections to the request?

9 **MR. LEE:** Sure. Yes, Your Honor.

10 **THE COURT:** Isn't that inconsistent with an answer
11 that you searched and you don't have it?

12 **MR. LEE:** I apologize, Your Honor. This may be what's
13 going on here, we responded to interrogatories and we responded
14 to document requests and looked at -- in reading each of them,
15 we looked at their breadth or whether they are objectionable,
16 whether they requested privileged information or the like and
17 we wrote down our objections, but then said subject to and
18 without waiving our objections, we will look. And we did look.
19 And we wrote in a sworn interrogatory answer. We described
20 exactly where we looked and what we did. And we told them what
21 we have found. And --

22 **THE COURT:** So as far as -- so as far as what I have
23 to rule on, you are not standing by those objections then,
24 because they are moot because you said you did look and you
25 didn't find anything. So I don't need to -- in other words,

1 it's like you are abandoning those objections.

2 **MR. LEE:** Your Honor, we wouldn't abandon the
3 objections in part because we didn't know what we would find.
4 So if someday something shows up, you know, we don't want to
5 abandon, for example, privilege or we don't want to -- we don't
6 want to -- I agree that our objections are moot. But I wouldn't
7 agree that a litigant needs -- needs to formally abandon them
8 because they can't find anything.

9 **THE COURT:** Well, then, what you are telling me is I
10 don't need to rule on them because they are -- as far as this
11 hearing, they have no relevance.

12 **MR. LEE:** I agree, Your Honor. They don't, because as
13 to every single objection other than privilege for which we
14 provided a privilege log, and those are only relating to 2019
15 and 2020 communications, there is no reason to rule because it
16 will do no good. What Mr. -- you got Mr. Edwards to the point.
17 What he seems to want is some sort of admission, for us to
18 write out an admission that we destroyed documents in 1984 and
19 that they must've been something to do with Southern and that
20 we have to admit that we did, in fact, issue policies to
21 Southern and that we threw them away. We're not going to admit
22 that. I don't think anybody can be compelled in response to a
23 motion to compel to do that.

24 And we have provided evidence to both Southern and to
25 the Court: number one, that if there was a '67 policy, it would

1 have been destroyed in the normal course in 1971; and number
2 two, and this is critically important, Your Honor, Southern,
3 pursuant to our discovery, admitted and provided us the
4 documentation showing us that a slew of other insurers wrote
5 its liability coverage from 1968. And so I think the motion to
6 compel needs to be read in that context.

7 But to answer your bottom line question, Your Honor,
8 there is nothing to rule on because it wouldn't do any good.
9 And we've told them that and we gave a sworn interrogatory
10 answer before they filed their motion to compel. So one wonders
11 why they filed.

12 **MR. EDWARDS:** Your Honor, may I respond?

13 **THE COURT:** Yes.

14 **MR. EDWARDS:** Your Honor, we filed this motion
15 because we were investigating whether and to what extent there
16 was coverage written by USF&G. When we received the discovery
17 responses back from USF&G, they were replete with enormous --
18 enormous numbers of boilerplate objections.

19 **THE COURT:** Well, now, you know -- now, you know that
20 those objections don't apply.

21 **MR. EDWARDS:** Well, when we've met and had a meeting
22 to confer about this motion, Your Honor, that's what we
23 requested, is if that's your position, withdraw the objections
24 and stand on your answers. But given our experience with this
25 same defendant in this same context in front of Justice Toal

1 where she ruled, quote, rarely ever has this Court encountered
2 such a degree of corporate dishonesty as has been on display
3 from USF&G during these proceedings, close quote. It was of
4 concern for us --

5 **THE COURT:** Well, I want you -- listen. I want you --
6 that's why I think I covered this. I think I covered it with
7 the other counsel, is that, as I understand your motion to
8 compel, it deals with all of what you call boilerplate
9 objections. And he now tells me he does not wish to -- he wants
10 to preserve them if something comes up in the future, but as
11 far as your request for production, they are not relying on
12 those, quote, boilerplate objections.

13 **MR. EDWARDS:** Yes, Your Honor.

14 **THE COURT:** So -- so -- so your motion to compel,
15 apparently, is satisfied.

16 **MR. EDWARDS:** No, Your Honor. The objections were a
17 part of our motion, but the underlying answers were another
18 part.

19 **THE COURT:** Well, let's -- let's -- tell me about
20 that.

21 **MR. EDWARDS:** Yes, Your Honor. Our concern is that
22 USF&G was going to come to this Court in this hearing and
23 others and say exactly what Mr. Lee just said, which is, we've
24 looked and we can't find anything. And what's highly relevant
25 in that inquiry is why is that true if it, in fact, is true.

1 And the answer is what we discovered in the prior case, in the
2 Covil case.

3 **THE COURT:** What you want this Court to do?

4 **MR. EDWARDS:** I think that the answer to the question
5 should include "We can't find policies," and why. There should
6 be an explanation of what happened that explains the contexts
7 of that answer, because that answer --

8 **THE COURT:** Haven't they -- haven't they said that,
9 that "We don't know of any policies. But if there were
10 policies, they were destroyed in our normal way of doing
11 business." Retention policy.

12 **MR. EDWARDS:** Your Honor, I think the key is that in
13 1980 -- in the 1980s, USF&G underwent a plan to destroy the
14 policies with a specific plan that it would allow Mr. Lee to
15 say today what he just said to this Court, which is we looked
16 and we can't find it. And I think that the accurate answer to a
17 search for policies in this period must include that context,
18 that we can't find these policies, but in the 1980s, we went
19 through and destroyed them all with great vigor and on purpose.

20 **THE COURT:** Mr. Lee, do you have any objection to
21 stating, either now or subsequently, as to why you would not
22 have any policies during that period of time?

23 **MR. LEE:** Your Honor, not only do I not have any
24 objection to that, we've done that. We've told the other side
25 in our answers and we've told the Court today that if there was

1 a 1967 policy, which we believe may not have been issued, but
2 if it was, it was destroyed -- it would have been destroyed
3 pursuant to a 1970 document retention policy which we have
4 provided to Southern. They have that.

5 **THE COURT:** And you are certifying that no policies
6 were destroyed in this -- as it relates to this litigation for
7 the purpose of avoiding liability?

8 **MR. LEE:** Correct, Your Honor. And let me tell you
9 why: There were no claims. There was nothing to put USF&G --
10 there is no evidence that USF&G was ever put on notice in the
11 1960s, the 1970s, the 1980s, the 1990s or the 2000s.

12 **THE COURT:** Well, what happened with in -- what
13 happened in connection with the cases before Judge Toal?

14 **MR. LEE:** They started -- they appeared in 2019, last
15 year. They first started -- those are the first claims made
16 against Southern which have ever been tendered to USF&G or
17 Travelers, 50 years after this --

18 **THE COURT:** What happened that caused her to make
19 that finding against --

20 **MR. LEE:** Your Honor, that finding was in a
21 completely -- and that's important, Your Honor. That finding is
22 in a completely different case with completely different facts.
23 For example, in the Covil situation, there was correspondence
24 between Covil and USF&G in the 1970s about policies and about
25 plans. So there was -- there was evidence that policies existed

1 and that they existed in the 1970s before the 1980s and the
2 supposed purge. I'm not going to get into our view of what has
3 been called a purge, because I don't think it's true. But I'm
4 not debating that in this case, at least not yet. And the whole
5 point is the facts in Covil are entirely different. There is
6 silence, radio silence, not a shred of evidence, not one
7 communication, not one letter, nothing before 2019 vis-a-vis
8 Southern and USF&G.

9 And at this point, there's an argument being made
10 that I think is essentially fantasy. After that 1967 and the
11 certificates of insurance, which are about policies that could
12 have lasted no more than one year, there is abundant evidence
13 that Southern has provided us to -- provided to us of other
14 liability insurance, not USF&G, by -- selling insurance to
15 Southern from 1958 into the 1980s. In essence, Your Honor,
16 insurance don't buy double coverage. If they buy it from
17 Continental, if they buy it from Potomac, if they buy it
18 from Loyal, they don't buy it from USF&G. So the suggestion
19 that anything that was destroyed in 1984 that has to do with
20 Southern, I think, is a fantasy. I think it is made up and it's
21 just being told to Your Honor as if it might be true. The
22 evidence is contrary to that.

23 Again, Your Honor, in a motion to compel context, I
24 don't think there's anything to do other than they would have
25 liked us to give them a better explanation, they would like us

1 to give them an admission that we destroyed Southern documents
2 in 1980s. And the evidence is contrary to that, so why would we
3 say that?

4 **MR. EDWARDS:** Your Honor, this is exactly what this
5 same company said to us for two years in the Covil case, which
6 is, "We can't find anything. We can't find anything. We can't
7 find anything," until the Chief Justice Toal finally issued the
8 right order and we presented her with evidence of the purge and
9 they finally came clean with a whole bunch of evidence that
10 they had not produced for over two years.

11 **THE COURT:** I know. But for the last time, what you
12 want me to do? If I rule in your favor, what do you want me to
13 do?

14 **MR. EDWARDS:** Your Honor, I think that we're entitled
15 to a straight answer as to the history of policies issued by
16 USF&G in this era. The notion that the policies were destroyed.

17 **THE COURT:** Wait a minute.

18 **MR. EDWARDS:** Yes, sir.

19 **THE COURT:** A history of policies issued? They say
20 they have no evidence to the policy issued to Southern.

21 **MR. EDWARDS:** Yes, Your Honor.

22 **THE COURT:** They can't give you a history if they
23 don't have a history.

24 **MR. EDWARDS:** Your Honor, maybe I misspoke. The
25 history that I think is relevant to that answer is what did

1 they do with policies issued by USF&G to companies like
2 Southern during this time frame in the 1980s.

3 **THE COURT:** I think he --

4 **MR. EDWARDS:** And the answer is --

5 **THE COURT:** I'm going to ask him that, but I think
6 he's already answered that. If -- they don't have any of those
7 policies because they were removed pursuant to their retention
8 policy.

9 **MR. EDWARDS:** Your Honor, if the policies were being
10 destroyed pursuant to that retention policy that Mr. Lee
11 described, there would have been no need for a purge. The
12 documents would have already been gone. But there was a purge
13 in the 80s. There was a corporate-wide systematic destruction
14 of policies just like this.

15 **THE COURT:** All right. Tell me -- tell me what you
16 want.

17 **MR. EDWARDS:** Your Honor, we would like an answer
18 that includes that fact, that policies like this, whether this
19 existed or not -- and I know they say they didn't -- it didn't
20 issue this policy and that they can't find it, but I think the
21 answer must include why, that policies just like this, during
22 this era, were intentionally destroyed as described by Justice
23 Toal in her orders.

24 [Phone ringing.]

25 **MR. EDWARDS:** It was not --

1 **THE COURT:** Listen --

2 **MR. EDWARDS:** Yes, sir.

3 **THE COURT:** Wait a minute. He's not going to say that
4 because he's already stated to the Court that they didn't do
5 that kind of thing as it relates -- as it relates to your
6 claim.

7 **MR. EDWARDS:** Your Honor, there's no possible way
8 he could know whether that happened or not. What -- what we do
9 know is that --

10 **THE COURT:** Well, how can answer a question if he
11 doesn't know what happened or not?

12 **MR. EDWARDS:** Your Honor, backing up to the request
13 that they sought in this lawsuit --

14 **THE COURT:** Listen. Let me tell you something. Let
15 me tell you something: I studied this matter. And they're all
16 kind of -- you've got a lot going for you with the red flags
17 that were raised by Justice Toal, and I would love to help you
18 and order him to do whatever is reasonable as far as your
19 discovery. But I can't get a reasonable request from you that I
20 can order him to do. What you are -- what you are suggesting is
21 something that he's already answered.

22 **MR. EDWARDS:** Your Honor, I apologize if I'm not
23 being clear. It is our experience with USF&G with policies of
24 this era that they were destroyed in the mid-80s. And the
25 explanation that Mr. Lee has offered is an innocuous

1 explanation for what might have happened. But what we know
2 happened in the 1980s is that this type of policy was
3 destroyed. And I just would ask the Court that their answer,
4 which they offered in Covil for years that "We can't find
5 anything," should be placed in the appropriate context of their
6 pattern of misconduct. Because otherwise, it's an innocuous,
7 "We can't find it," and at the end of this case, that's what
8 they're going to ask the Court to rely on to find that there is
9 no obligation here.

10 **MR. WHITE:** Your Honor, may it please the Court.

11 **THE COURT:** Yes.

12 **MR. WHITE:** I know he is speaking and maybe the Court
13 or Mr. Lee will objective to me speaking, but we -- what we're
14 basically saying to the Court is this is a case where they
15 brought it before Your Honor, who is one of our most
16 distinguished federal court judges, and they're asking you to
17 hear this case in a vacuum. And I know the Court's not going to
18 do that and I know you're going to want to know what's going on
19 elsewhere.

20 So the first thing they do, they come in today and
21 they say, "We're not saying that there has been any criminal
22 action on behalf of the receiver with these certificates, but
23 we don't -- we don't even -- we don't even agree that they're
24 authentic." And what's happened, Judge, when they come in and
25 say that, their hand has already been caught in the cookie jar

1 before Former Chief Justice Toal and it's evidenced by an
2 order.

3 So here's what we'd like from them --I'd be happy to
4 tell you what we'd like. We would like for them, as they have,
5 withdraw any objections, boilerplate language or otherwise.

6 **THE COURT:** They -- that's been taken care of.

7 **MR. WHITE:** Okay. Number two, we don't want the
8 discovery to be limited from 1967 to 1968. We want a full range
9 of discovery. And his characterization of 56 years might be a
10 misnumber, but we want a full discovery in regards to where we
11 are with the Southern receivership.

12 **THE COURT:** I don't have any problem with that, but
13 what they're going to say is that he's already said -- and he
14 can correct me if I am wrong -- is that for all the years, they
15 don't have any records.

16 **MR. WHITE:** The other thing, Spartanburg County
17 style, we want them to quit beating around the bush on the
18 answers and we want a full and complete answer with
19 explanation. Because we've already been with them for two years
20 where they have not come forth with complete answers --

21 **THE COURT:** Complete answer as to what?

22 **MR. WHITE:** Well, like Mr. Edward said, in regards to
23 the purge. The purge is going to be an important in this case
24 and what happened. And the last thing that we would like is if
25 they are going to assume --

1 **THE COURT:** Wait a minute. Before you go to the last
2 thing, that one you were just saying, an answer to what?

3 **MR. WHITE:** Okay. We would like an answer as to what
4 were the circumstances in regards to the purge in 1984, before
5 and after and otherwise. And we believe, based on the
6 litigation that's gone on in South Carolina and other
7 jurisdictions, that they realized at some point that that was
8 going to be an enormous liability for them and, as a result,
9 they decided to do the purge. And you will get to see evidence
10 and you will get to see an expert opinion on that as we go
11 forward. But what we are trying to do is we're trying to do
12 timed down what we can do 30(b)(6) motions and be able to then
13 explore this case before Your Honor.

14 And the last thing is --

15 **THE COURT:** Now, wait a minute. That had to do
16 with -- I'm trying to make notes here.

17 **MR. WHITE:** I think it was the 1984 purge or the
18 purge in the 1980s.

19 **THE COURT:** Thereabouts?

20 **MR. WHITE:** Pardon me, Your Honor.

21 **THE COURT:** Thereabout 1984?

22 **MR. WHITE:** Yes, sir. And then the last thing, the
23 next thing is if there are not policies or there are not
24 certificates, there are other methodologies for trying to prove
25 insurance coverage, which is reinsurance or otherwise. And we'd

1 like those explanations. We would like to know who their
2 reinsurers were at the time --

3 **THE COURT:** Has that been asked for and denied?

4 **MR. WHITE:** I don't -- yes, sir.

5 **MR. LEE:** That -- Your Honor, that -- Your Honor --
6 Your Honor, let me be clear. It was asked for. It was objected
7 to. We searched for it. There isn't any. We don't have
8 any reinsurers --

9 **THE COURT:** And you -- and you told them?

10 **MR. LEE:** And we put it -- all of these are in the
11 answers.

12 **THE COURT:** Okay.

13 **MR. LEE:** Everything that has been requested is in
14 the answers. They just don't like the ---

15 **THE COURT:** Did you answer the fact of what he's
16 requesting, the reason for the 1984 thereabouts document
17 elimination?

18 **MR. LEE:** We produced all the documents we have
19 relevant to --

20 **THE COURT:** That's not what I'm asking. Did you give
21 them an answer as to the reason for the 1984 document
22 elimination and the circumstances surrounding it?

23 **MR. EDWARDS:** In general terms, no. I don't think
24 that's been asked of us.

25 **THE COURT:** I think I'm -- I'm going to order you to

1 do that. For clarification: I want you to respond -- I want you
2 to provide to the defendant the reasons and circumstances as it
3 relates to the 1984, or thereabouts, document elimination.

4 **MR. LEE:** Your -- Your Honor, we have provided them
5 with an affidavit about that and we will --

6 **THE COURT:** Well, I thought you just told me -- I
7 thought you just told me they never -- nothing -- they never
8 requested that hadn't been provided.

9 **MR. LEE:** Not in this case, they haven't. But we took
10 everything in the Covil case, including the affidavits, the
11 explanations, the interrogatory answers, everything, and we
12 cross-produced them in this case so that this argument would
13 not be made, that there would be no suggestions that --

14 **THE COURT:** It would not cause you any trouble to
15 redo it for this case.

16 **MR. LEE:** Correct.

17 **MR. WHITE:** And Your Honor, we've received, I believe
18 a limited privilege log. If that's the only privilege they're
19 going to assert in the case, that's fine. If they're going to
20 assert any other privileges, we would like a privilege log.

21 **MR. LEE:** Your Honor, if I could just go through the
22 list, I'd be happy to do that and I can work backwards.

23 **THE COURT:** Well, now, wait a minute.

24 **MR. LEE:** We don't have --

25 **THE COURT:** That -- that -- wait a minute. That's --

1 that's -- it's no sense going through that because you don't
2 have any documents that it apply to it.

3 **MR. LEE:** Correct, Your Honor.

4 **THE COURT:** You are reserving the right to raise it
5 if a document does show up.

6 **MR. LEE:** Correct.

7 **THE COURT:** All right. I believe that's all. Thank
8 you.

9 **MR. EDWARDS:** Thank you, Your Honor.

10 **THE COURT:** We stand adjourned.

11 **THE MARSHAL:** All rise. This Court is now adjourned.
12 (The Court adjourns at 11:28 a.m.)

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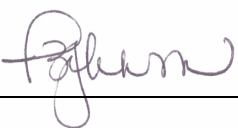
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C E R T I F I C A T E

16 I certify that the foregoing is a correct transcript from
17 the record of proceedings in the above-entitled matter.

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_____ August 19, 2020

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Teresa B. Johnson, CVR-M-CM, RVR, RVR-M

Date

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